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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

**No. 1095**

JOHN J. GANNON, Individually and as PRESIDENT OF INDEPENDENT WATCHMEN'S ASSOCIATION,

*Petitioner,*

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on behalf of ALL MEMBERS SIMILARLY SITUATED,

*Respondent.*

## BRIEF FOR THE RESPONDENT IN OPPOSITION

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*Respondent.*

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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### Reported Opinions of the Courts Below

The opinion of the United States Court of Appeals for the Second Circuit, Per Lumbard, Ch. J., is reported at 385 F. 2d 512 (A. 1). The opinion of the United States District Court for the Southern District of New York, Per Metzner, J., is reported at 266 F. Supp. 601 (not appended by petitioner but contained in the record at pp. 111-122).

## Question Presented

1. Did the directive of petitioner infringe or threaten to infringe upon the federally protected rights of the individual members of Local 2, as those rights are secured by Sections 101(A)(1) and (2) of the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U. S. C. 401 et seq., so as to thereby justify the issuance of a preliminary injunction pursuant to Section 102 of the Act, 29 U. S. C. 412, and Rule 65 of the Federal Rules of Civil Procedure?

A. Where a parent union, without the benefit of authority of a federal statute or of its own constitution (and actually, contra to the express provisions of its own constitution), directs:

i. that a regular membership meeting of one of its affiliate locals be completely taken over by international officers, which officers have no right to be even present at a local meeting; and further

ii. that the meeting be conducted by said officers to the exclusion of the local officials duly elected by the membership;

iii. and bars the attendance at such meeting by the local's legal counsel,

is there a violation or threatened violation of the rights of the individual members of the local union to meet, assemble and discuss matters before the union meeting as provided for in Sections 101(A)(1) and (2) of the Act, 29 U. S. C. 411(A)(1) and (2)?

B. Does the guaranty of the rights contained in Sections 101(A)(1) and (2) of the Act to meet, assemble and discuss matters properly before a union meeting encompass therein:

i. the right of the individual members of the local to conduct the affairs of their union without undue interference from the international union with which they are affiliated; and

ii. to meet at regular local meetings under the supervision of local officials chosen by the membership for the purpose;

iii. without the presence and control of international officers who have no right to impose their presence at a local meeting?

## Statement of the Case*

### (A) The Petition for Review

Petitioner seeks a writ of certiorari to review a judgment and order of the United States Court of Appeals for the Second Circuit (A. 18) unanimously affirming an order of the United States District Court for the Southern District of New York, said latter order granting respondent's motion for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure and Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. 412, and preliminarily enjoining petitioner from interfering with meetings of the respondent's local union (R. 129-132).

* Unless otherwise indicated, all references are to the record on file in this Court.

Specifically, the said order of the District Court enjoined petitioner, during the pendency of the action, from doing the following acts, which he had, as President of Independent Watchmen's Association, undertaken to do:

1) Assuming control of any membership or executive board meetings of Local 2, International Union of Police and Protection Employees-Independent Watchmen's Association;

2) Attending any membership meetings of Local 2, or participating in the deliberation and voting upon the business of such meetings except as provided for in the constitution of the Independent Watchmen's Association and By-Laws of Local 2, International Union of Police and Protection Employees-Independent Watchmen's Association;

3) Interfering with the attendance of Local 2 counsel at meetings of Local 2;

4) Directly or indirectly, in violation of the constitution of the Independent Watchmen's Association, By-Laws and Charter of Local 2, hindering or interfering with the right of respondent and all other members of Local 2 to freely meet and assemble with other members;

5) Preventing the expression at meetings of Local 2, of views upon any business properly before the meeting; and

6) From denying or interfering with the right of any elected officer and officials of Local 2 to preside over the meetings of the aforesaid Local (R. 131).

The preliminary injunction was issued pursuant to 29 U. S. C. 412 (*infra,* fn. 1) upon the ground that certain conduct and activity previously undertaken by the petitioner would, if allowed to continue, deprive the members

of Local 2 of their rights within said labor organization as guaranteed them by 29 U. S. C. 411(A)(1) and (2) (*infra,* fn. 2) (R. 130).

**(B) Jurisdiction in the Court of Original Instance**

This action, which seeks a permanent injunction and declaratory judgment (R. 73), was instituted in the United States District Court for the Southern District of New York under the express authority contained in Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. 412[1] and seeks protection against infringement and threatened infringement of rights secured by Sections 101(A)(1) and (2) of the Act, 29 U. S. C. 411(A)(1) and (2)[2] (R. 115).

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[1] 29 U. S. C. 412:

"Civil Action for Infringement of Rights; Jurisdiction—

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

[2] 29 U. S. C. 411(A)(1):

"(A)(1) Equal Rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

29 U. S. C. 411(A)(2):

"(A)(2) Freedom of Speech and Assembly—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any

**(C) The Case as Presented to the Courts Below**

The action was brought by Enrique Navarro, as an individual member, and as President of Local 2, International Union of Police and Protection Employees-Independent Watchmen's Association, and on behalf of all members similarly situated (R. 68). Relief is sought as against John J. Gannon individually and as President of Independent Watchmen's Association (R. 68).

Local 2 is an affiliate local of the Independent Watchmen's Association and as such holds a charter from and operates pursuant to the constitution of the Independent Watchmen's Association and the By-Laws of Local 2 (approved by the Independent Watchmen's Association) (R. 17, 54, 68, 72).

The conduct of the petitioner which necessitated the within action takes the form of a letter (Ex. 1 to amended complaint, R. 76-77) which was self-termed a "directive", and which emanated from petitioner Gannon as International President of Independent Watchmen's Association. Said "directive" issued over the signature of the International Secretary-Treasurer, and was sent to each and every member of Local 2 (R. 18, 56, 114). And by such "directive" petitioner orders that:

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views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates, in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

"1. First Vice-President Kirby attend your next stated meeting called for February 19, 1967 and act as Chairman of such meeting.

2. Secretary-Treasurer McFaun and Sergeant-At-Arms Mancina attend such meeting and assist Vice-President Kirby in conducting same.

3. Secretary-Treasurer McFaun be appointed to take true and exact minutes of such meeting.

4. No counsel be permitted to attend this meeting.

5. Only members of the local in good standing on proper showing of dues books be permitted to participate in the meeting and that all other persons other than those members of Local 2 in good standing and the international officers specified herein be excluded from participation in the conduct of such meeting" (R. 76-77).

This "directive" was preceded by an expression of displeasure over the fact that some of the members of the local allegedly desired to disaffiliate from the international; that the local had replaced its former legal counsel (*who was and still is counsel for petitioner*); and that attempts had been made within the local to change the insurance company responsible for administering the welfare program. In short, a complete "take over" was attempted.

The above is what petitioner characterizes as "only a reasoned discussion without threats of discipline" (Petition, pp. 2-3) meant to "merely stimulate (rather than suppress) discussion" (Petition, p. 8) and as constituting action undertaken by petitioner solely "to furnish information and to provide for an orderly discussion" (Petition, p. 6).

The petitioner's wanton disregard for the rights of the members of Local 2 is underscored when that which petitioner attempted to do under claim of right is viewed against the guarantees contained in Sections 101(A)(1) and (2) of the Act (29 U. S. C. 411(A)(1) and (2)), the petitioner's own Constitution and the By-Laws of Local 2. Parenthetically, it will be noted that the claim of the respondent in the courts below has consistently been that that which petitioner threatened and attempted to do with reference to the meetings of respondent's local union constituted a direct attack upon and threatened infringement of the rights of the individual members of Local 2 as those rights are secured by Sections 101(A)(1) and (A)(2) of the Act; was in direct contravention of the Constitution of the I. W. A. and By-Laws of Local 2; and insofar as the petitioner seeks to justify the action taken on the basis of Article IX of the I. W. A. Constitution (Ex. 2 to amended complaint, p. 9 thereof, R. 78, p. 9) as being an exercise of the inherent supervisory power of the international over the local, is an attempted application of the Constitution and By-Laws in a manner which would deprive the members of Local 2 of statutory rights.

Article IX, Section 1 of the I. W. A. Constitution (Exhibit 2 to amended complaint, R. 78, p. 8) as same refers to the powers and duties of international officers specifically states that the international president shall have the power to attend local meetings. Article V of the By-Laws of Local 2 (Ex. 3 to amended complaint, R. 79, p. 3) which was approved by the I. W. A. specifically states that the local's president shall preside at all local meetings. This is reaffirmed in Article XI of the I. W. A. Constitution (R. 78, p. 13), that absent a contrary By-Law provision, the local's president shall preside at all local meetings.

With reference to the international's secretary-treasurer, Article IX, Section 3 of the I. W. A. Constitution (R. 78, p. 10) vests said officer with the power to record meetings of conventions and international executive board meetings, the recording of *local* meetings being reserved to the local's recording secretary in Article V of the Local 2 By-Laws (R. 79, p. 3). Likewise, Article IX, Section 3 of the I. W. A. Constitution (R. 78, p. 12) only allows the international sergeant-at-arms to assist the international president in maintaining order at meetings over which the international president presides.

It is within the foregoing factual setting that respondent was forced to institute action in the District Court, seeking, inter alia, an injunction restraining petitioner from interfering with the meetings of Local 2 on the ground that such interference would be in violation of the LMRDA, and in particular restraining petitioner from assuming control of the local meeting, from barring attendance of local counsel, from interfering with the right of the members to express views on matters before the meeting, and from interfering with the right of the members to have duly elected local officers preside over their meeting.

The exigencies of the circumstances necessitated the use of an order to show cause (R. 13-15) which was signed by the Hon. Constance Baker Motley at 4:00 P.M. on February 17, 1967.[3] The aforesaid order to show cause contained a temporary restraining order, the terms of which were similar to the preliminary injunction ultimately issued.[4]

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[3] Order to show cause actually signed February 17, 1967, but inadvertently dated February 16, 1967.

[4] The parties appeared before Circuit Judge Anderson on Saturday, February 18, 1967, upon petitioner's application to stay the restraining order of Judge Motley; said application being denied (R. 112).

After a hearing on March 14, 1967, District Judge Metzner, in an order entered on May 3, 1967, granted the motion for a preliminary injunction. Thereafter, and on November 20, 1967, after petitioner had taken an appeal to the United States Court of Appeals for the Second Circuit, a judgment and order was entered in said Court, unanimously affirming the order of the District Court (A. 18).

**(D) The Findings of the Courts Below**

In the District Court, Judge Metzner found, among other things, that the directive of petitioner and the action therein threatened was on its face violative of 29 U. S. C. 411 (A)(1) and (2), and granted the motion accordingly (R. 120).

Implicit in this finding is the further finding that where a parent union (petitioner), without authority of federal statute or of its own Constitution (and indeed in direct contravention of the express provisions of its own Constitution), directs that a regular meeting of one of its affiliate locals be taken over by international officers, which officers had no right, as such, even to be present at such meeting; and that the meeting be conducted by said officers to the exclusion of the local officials duly elected by the membership; and that legal counsel of the local be excluded, such threatened conduct necessarily constitutes an infringement upon the federally protected rights of the members of the local to meet and assemble freely, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meeting.

The Second Circuit, in an exhaustive opinion (A. 1-17), agreed with Judge Metzner that "the rights of the plaintiff, protected by federal law, were threatened by the defen-

dants" and found "that the injunction was a proper exercise of his discretion" (A. 6).

To set the issues in their proper perspective, the Circuit Court, after reviewing the I. W. A. Constitution and applicable federal law concerning the suspension of local union autonomy (A. 7-8), found that Article XV of the I. W. A. Constitution provided appropriate procedures for disciplining any member or local, and that Article XVII provided for the institution of trusteeships which followed the requirements contained in Title III of the LMRDA, 29 U. S. C. 461 et seq. (A. 7-8). The foregoing was pointed out to show, in the words of the Court "[that] the Constitution * * * provides procedures by which abuses in local unions may be controlled by the international, and to indicate that the defendants here chose not to follow those procedures, or even allege such abuses, but instead sought to assume control of the local under their general supervisory authority. This they cannot do if assumption of control involves a deprivation of a right protected by the Act" (A. 7, fn. 6). In this connection it will be noted that petitioner, as urged below, seeks to justify the threatened supervision solely on the basis of Article IX of the I. W. A. Constitution which is a catch-all provision giving the petitioner unspecified "other and further powers" (Petition, p. 3).

The Circuit Court dealt with the question of the right to meet at regular meetings and participation therein (A. 10) and specifically held that "the guaranty in Section 101(A)(1) of the equal right to participate in the deliberations and voting at union meetings, and the guaranty in Section 101(A)(2) of the right to express views upon business before the meeting necessarily encompass the right

to assemble, consult and decide matters of concern to the local union without the inhibiting presence and control by international officials" (A. 10).

The Court found that the secured rights of speech and assembly would be compromised if the local meeting in these circumstances would be taken over by the international, as the right to assemble must include the right to meet under the supervision of the representatives chosen for that purpose (A. 11). The Court went on to say that "the best guaranty of this freedom [to criticize, dissent and oppose] is that the local meeting be run by the elected officers of the local; to have hostile outsiders attempt to manage the meeting, determine who may attend, and who is to be recognized is the surest way to stifle and destroy the very rights which the Act seeks to protect" (A. 12).

Petitioner presses in this Court that there was no "threatened danger to any right to vote" (Petition, pp. 2 and 6). This argument is at once irrelevant, and incorrect. The Court below held that before it was a threatened invasion of the members' right to free discussion, which encompassed the right to meet under the supervision of the members' own duly elected officers, uninhibited by the overbearing presence of outsiders who were, by their own admission dissatisfied with the members' previous course of free discussion (A. 15). In this connection it was found that free discussion would be impossible if the forum were to be under control of a superior force, with "foreigners" patrolling the meeting chamber and exercising the prerogatives of the chair (A. 16).

## Reasons for Denying the Writ

### I.

**The decision below is clearly correct and is not in conflict with decisions of Courts of Appeals of the other Circuits or of this Court; nor is there presented an important question of federal law which has not been, but should be settled by this Court.**

Petitioner urges that the opinion of the Court of Appeals creates a situation where "persuasion and orderly discussion are apparently outlawed if exercised by a parent union" (Petition, p. 4). This contention must be examined against the entire background of this case and in particular in the light of what petitioner attempted to do. At issue here are basic and essential federally guaranteed rights of union members. "Persuasion" and "orderly discussion" by a parent union are not outlawed *so long as the parent acts in a manner which does not deprive the members of an affiliate local of their statutory rights.* In the case at bar, petitioner had undertaken a course of "persuasion" and "orderly discussion" by seeking to assume complete control over a local meeting, thus to create a captive audience to listen to what petitioner had to say. Petitioner would seek to "persuade" the members of the local by suspending their system of self-government and by a brazen show of authority force the members in lawful attendance to meet with outsiders, not even members of the local, who had no right to set foot in the meeting chamber save by invitation. Petitioner urges that the directive was meant to "merely stimulate (rather than suppress) discussion" (Petition, p. 8). One is hard put to see how such directive

could result in anything short of the *stifling* of free discussion by the membership. As the Court of Appeals aptly put it "it seems clear to us that free discussion is impossible if the forum is under the control of superior force, with foreigners patrolling the meeting chamber and exercising the prerogatives of the chair" (A. 16). It seems quite clear that "persuasion and orderly discussion" as visualized by petitioner, are synonymous with intimidation and disregard for the rights of the members of Local 2.

Accordingly the members of Local 2 sought protection against infringement and threatened infringement of their rights as guaranteed them in Sections 101(A)(1) and (2) of the Act, 29 U. S. C. 411(A)(1) and (2). If, in the circumstances of this case, protection of those federal rights will have the ancillary effect of preventing petitioner from embarking upon his peculiar style of "persuasion and orderly discussion", then that must unavoidably be. No policy determination or directive from any international office or any provision contained in an international constitution can define, limit or otherwise infringe upon the rights which respondent seeks to have protected. *Johnson* v. *Nelson,* 325 F. 2d 646, 653 (8th Cir. 1963).

When as here, it is found that statutory rights of a union member are being violated or are threatened with violation (even by a parent union), a duty is cast upon our federal courts to insure that the federal rights of that union member are preserved and protected. Indeed, the Court in *Calhoon* v. *Harvey,* 379 U. S. 134 (1964), recognized this principle in holding that a direct attack on statutory rights would justify court interference.

Petitioner places great emphasis upon *Gurton* v. *Arons,* 339 F. 2d 371 (2nd Cir. 1964), in arguing that only in the

most extreme cases where rights under the LMRDA are under direct attack will Court interference be justified. The fact remains that *Gurton* and *Calhoon* stand for the proposition that so long as there is an attack upon these federal rights our federal courts may act. In *Gurton* the Court stated at p. 375 that "so long as the union * * * violates no provision of law, we judges should resolutely keep hands off". Implicit in this statement is the holding that where there is a violation of the LMRDA there is a duty upon the court to intervene. Chief Judge Lumbard, who wrote the opinion for the Court below recognized the role of the federal courts in cases of this sort when, in writing a concurring opinion in *Gurton*, he stated at pp. 375-376, that the role of the Court was to insure that "choice is made in a manner which does not violate the rights of members under Section 101(A)(1)". As will be seen herein, rights provided for and secured by 29 U. S. C. 411(A)(1) and (2) came under direct attack by petitioner when he issued his directive, and the resulting injunction was properly issued and properly upheld.

As previously noted, the conduct of the petitioner which has resulted in the case at bar takes the form of a letter (Ex. 1 to amended complaint, R. 76-77) which was self-termed a "directive" and which emanated from petitioner Gannon as International President of the Independent Watchmen's Association over the signature of the International Secretary-Treasurer. This directive was sent to each and every member of Local 2 (R. 18, 56, 114) and stated that petitioner *directed* that the international officers assume control over the conduct of a previously scheduled local meeting (R. 77). Also directed was the exclusion of the duly appointed legal counsel of Local 2, and all

persons other than paid up members and international officers. This action was attempted under the guise of the inherent supervisory power of the international over the local, and as being purportedly authorized by Article IX of the I. W. A. Constitution which grants to the International President additional but unspecified powers (R. 57, Petition, pp. 3-4).

Article IX, Section 1 of the I. W. A. Constitution (R. 78, p. 8) as same refers to the powers and duties of international officers specifically states that the International President shall have power to *attend* local meetings. Nowhere in Article IX is the power given to any international officer to attend meetings *other than the International President.* Indeed, the power of the International President to attend meetings means only that he is authorized to be physically present—no authority is conferred upon him or to any other person in the I. W. A. to preside over a meeting of Local 2. In this connection it will be noted that Article XI of the I. W. A. Constitution (R. 78, p. 13) specifically states that in the absence of a contrary By-Law provision the local's President shall preside over local meetings, and Article V of the By-Laws expressly provides that the local's President shall preside at *all* local meetings (R. 79, p. 3). With reference to the International Secretary-Treasurer, Article IX, Section 3 of the I. W. A. Constitution (R. 78, p. 10) vests said officer with the power to record meetings of conventions and International Executive Board meetings, the recording of local meetings being specifically reserved to the local recording secretary per Article V of the By-Laws (R. 79, p. 3). Likewise, Article X, Section 4 of the I. W. A. Constitution (R. 78, p. 12) only allows the International Sergeant-At-Arms to assist the

International President in maintaining order, presumably at meetings over which the International President presides.

The Constitution of the I. W. A. and By-Laws of Local 2 were properly before the Court below for review in determining whether or not the preliminary injunction was correctly issued. This is particularly so in view of the contention of petitioner that what was sought to be done was consistent with Article IX of the I. W. A. Constitution (R. 78, p. 9) as being an exercise of the inherent supervisory power of the International over Local 2 (R. 57, Petition, pp. 3-4).

Where the claim is that the Constitution and By-Laws are being applied so as to deprive persons of rights under 29 U. S. C. 411, the aforesaid documents may be considered. *Gurton* v. *Arons,* 339 F. 2d 371 (2nd Cir. 1964); *United Brotherhood of Carpenters and Joiners of America* v. *Brown,* 343 F. 2d 872 (10th Cir. 1965); *Null* v. *Carpenters Dist. Council of Houston,* 239 F. Supp. 809 (D. C. S. D. Texas 1965). Indeed, this Court in *Calhoon* v. *Harvey,* 379 U. S. 134 (1964) examined the Constitution and By-Laws of the union in that case in determining whether or not a violation under the LMRDA had occurred.

In *Gurton* the Court said at p. 374, that "as long as no claim is made that provisions of the Constitution and By-Laws are being applied in such a way as to deny equality in voting, there is nothing in Section 101 which authorized consideration of those documents." The case at bar is the converse of *Gurton* in that here such a claim was made, to wit: that when petitioner sought to justify his "directive" upon Article IX of the I. W. A. Constitution, there was an attempted application of the Constitution and By-Laws

in a manner which would deprive the members of Local 2 of their rights to meet, assemble, etc. as provided for in Title I of the Act. The Court of Appeals took pains to point out that "we refer to the Constitution only to show that it provides procedures by which abuses in local unions may be controlled by the international, and to indicate that the defendants here chose not to follow those procedures, or even to allege such abuses, but instead sought to assume control of the local under their general supervisory authority. *This they cannot do if assumption of control involves a deprivation of a right protected by the Act*" (A. 7, fn. 6; A. 8). (Emphasis supplied.)

Petitioner argues that no rights of respondent as provided by Title I of the Act were violated or were threatened with violation by his directive (Petition, p. 6). Section 101(A)(1), 29 U. S. C. 411(A)(1) guarantees in pertinent part the right of every member of a labor union "to attend membership meetings and to participate in the deliberations of such meetings, subject to reasonable rules and regulations in such organization's Constitution and By-Laws." Section 101(A)(2), 29 U. S. C. 411(A)(2) secures the "right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views * * * upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings."

The foregoing "Bill of Rights" provisions were included in the Act to protect and foster participation by the rank and file in the affairs of the union. *American Federation of Musicians* v. *Wittstein*, 379 U. S. 171, 182-183 (1964). The foregoing was described by this Court at p. 182 as "the

pervading premise" of the Act. The rights provided in and secured by the Act have been interpreted to insure free and untrammeled discussion and to strengthen internal union democracy. *Salzhandler* v. *Caputo,* 316 F. 2d 445 (2nd Cir. 1963), cert. den., 375 U. S. 946 (1963); *United Brotherhood of Carpenters and Joiners of America* v. *Brown,* 343 F. 2d 872 (10th Cir. 1965); *Green* v. *Local 705, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO,* 220 F. Supp. 505 (D. C. E. D. Michigan 1963); *Grand Lodge* v. *King,* 335 F. 2d 340 (9th Cir. 1964), cert. den. 379 U. S. 920. The individual members of a labor organization are given protection with a view toward allowing those members to conduct local affairs with a minimum of outside interference, and the internal operations of unions are left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. *United Brotherhood of Carpenters and Joiners of America* v. *Brown, supra; Gurton* v. *Arons,* 399 F. 2d 371 (2nd Cir. 1964). It is respectfully submitted that the Court below properly found that the petitioner, in attempting to take over the local meeting, posed a direct and immediate threat to the rights contained in the foregoing statutes.

The decision below is in complete conformity with the foregoing authorities and within the spirit, intent and purpose of the LMRDA. Certainly, there is no conflict between the various Circuits as to how the Rights provided for by Sections 101(A)(1) and (2) of the Act are to be interpreted, that question having been settled with finality when this Court held in *American Federation of Musicians* v. *Wittstein,* 379 U. S. 171, 182-183 (1964), that these rights are to protect and foster participation by the rank

and file in the affairs of the union. In this connection it will be noted that the Second Circuit in no way conflicted with its own opinion in *Yanity* v. *Benware,* 376 F. 2d 197 (2nd Cir. 1967). In *Yanity* the Court held that the right to meet and assemble is applicable to *participation* in meetings and not to the general right to hold meetings. *Participation* by members in their regular meetings is the heart of the case at bar and is what the lower Court concerned itself with (A. 15). Nor is there any question as to when our federal courts should intervene to protect these rights. That too has been passed upon by this Court in *Calhoon* v. *Harvey,* 379 U. S. 134 (1964). The decision below is sound and rests upon propositions of law which have emerged from this Court and from the various Circuit Courts within the brief period of time that the "Bill of Rights" has been a part of the body of federal labor law.

There is no important question of federal law presented by petitioner which has not been, but should be settled by this Court. True, the bulk of those cases decided under Sections 101(A)(1) and (2) of the Act have in the main dealt with voting rights, and our federal courts for the most part have not been presented with violations of the exact kind presented here. That fact alone does not create in this case a question of federal law which ought to be separately settled. The facts of this case are quite clear and not open to dispute. The only question in this case was as to the effect of petitioner's directive upon the rights of the members of Local 2, and on this question there again can there be no dispute.

The Court of Appeals properly found that the right of speech and assembly encompasses the right to meet under the supervision of the representatives chosen by the mem-

bers of the local for that purpose and that the aforementioned secured rights would be compromised if the local meeting is taken over by the International (A. 11).

By arbitrarily and without authority, "directing" the individual members of Local 2 that *they* would have *their meeting* run in a manner other than as provided in *their* own Constitution and By-Laws, without the benefit of *counsel of their own choosing,* the petitioner manifested a wanton disregard for the rights of the individual members. Indeed, if Section 101(A)(1) gives a right to attend membership meetings, such right must necessarily mean meetings which are to be held in accordance with the will of the membership as evidenced by their Constitution and By-Laws.

Each and every member of Local 2, by virtue of assuming membership in the union, has contracted that he would be governed by the Constitution and By-Laws of the union. *Cleveland Orchestra Committee* v. *Cleveland Federation of Musicians Local No. 4, American Federation of Musicians, AFL-CIO,* 303 F. 2d 229 (6th Cir. 1962). In like manner, the International is bound by its own Constitution. *Simmons* v. *Avisco, Local 713, Textile Workers Union,* 350 F. 2d 1012 (4th Cir. 1965); *United Nuclear Corp.* v. *NLRB,* 340 F. 2d 133 (1st Cir. 1965).

Can the rights contained in Sections 101(A)(1) and (2) to meet, assemble, and participate have meaning or substance if they do not include therein the right to meet with the benefit of legal advice, under the supervision of the representatives lawfully chosen for that purpose? In its holding, the Court of Appeals stated that "that is the cornerstone of Democratic rule—that the government is freely chosen by the governed. And the representatives.

the officers of Local 2, may not be shunted aside without gravely endangering the individual rights of the members" (A. 11). This is completely consistent with *United Brotherhood of Carpenters and Joiners of America* v. *Brown*, 343 F. 2d 872 (10th Cir. 1965); and *Gurton* v. *Arons*, 339 F. 2d 371 (2nd Cir. 1964) wherein it was held that protection is afforded under the LMRDA with a view toward allowing the members to conduct local matters with a minimum of outside interference, leaving the internal operations of the Union to the officials chosen by the members to manage those operations, except where otherwise expressly provided by the Act. Here petitioner sought clearly to disrupt a local meeting and to usurp the membership's prerogative of self-management by the officers chosen for that purpose.

Section 101(A)(1) guarantees the right to attend membership meetings, and to participate in the deliberations therein. Section 101(A)(2) secures the right to meet with other members, and protects free expression of views at such meetings. On its face the directive presented a plain threat to those rights. It was demonstrated to the Court below that under the Constitution and By-Laws involved (*supra*), only the International President was given the right to *attend* a local meeting. No right is given to any other international officer to attend a local meeting, much less preside thereat. By petitioner's directive he attempted to forceably place outsiders (not local union members), in the meeting chamber of the members of Local 2, and forced the members to meet with these persons. It is quite clear that freedom of assembly and of association were thus glaringly attacked.

Further, the right to free expression of views was surely jeopardized. The atmosphere which petitioner sought to create at the local meeting was one of absolute control and domination by the international. The lower Court, in discussing this freedom was of the opinion that "free discussion is impossible if the forum is under the control of superior force, with foreigners patrolling the meeting chamber and exercising the prerogatives of the Chair" (A. 16). Said conclusion is inescapable. A contrary holding would have stripped the statutory guarantees here at issue of all substance.

## CONCLUSION

**For the reasons set forth above it is respectfully submitted that the petition for a writ of certiorari be denied.**

Respectfully submitted,

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